

# **Bar Counsel's Report to the Supreme Judicial Court**

## **Fiscal Year 2006**

### **Executive Summary**

This is a summary of the key points in the report that follows for the fiscal year that ended on August 31, 2006:

- The Office of Bar Counsel this year, as in the six previous years, disposed of more complaint files than were received. The median age of pending files on which petitions for discipline have not been filed decreased substantially in fiscal 2006.
- Evidentiary hearings in fiscal 2006 were held in 70% more cases than in fiscal 2005 and resulted in two-and-a-half times as many evidentiary hearing dates.
- The Attorney and Consumer Assistance Program screened and resolved 73% of all contacts with the Office of Bar Counsel within less than thirty days.
- Bar counsel's ethics hotline provided guidance on issues of professional conduct to over 2300 lawyers.
- Bar counsel instituted a free monthly "trust account school" to provide lawyers with training in implementing the trust account record-keeping requirements of Mass. R. Prof. C. 1.15 as amended in 2004.
- Bar counsel and assistant bar counsel wrote articles and made numerous presentations on professional conduct for law schools, bar associations, and continuing education organizations.
- Bar counsel took the lead in recommending that Lawyers Concerned for Lawyers institute a law office management assistance program (LOMAP) and in assisting LCL

in obtaining funding from the Supreme Judicial Court for the program, which will begin in 2007.

- Bar counsel made a detailed submission to the Supreme Judicial Court, highlighting the proposals that bar counsel believes will be most beneficial from the October 2005 American Bar Association report on the Massachusetts disciplinary system.
- Bar counsel, along with the Board of Bar Overseers, also recommended to the Court that a rule be adopted requiring attorneys to provide additional information concerning malpractice insurance coverage. The Supreme Judicial Court in June 2006 issued an order amending S.J.C. Rule 4:02 to require that lawyers certify in their annual registration statements whether they are currently covered by professional liability insurance.
- Bar counsel Daniel Crane resigned in June 2006 after seven years as chief bar counsel. A search is underway for a successor.

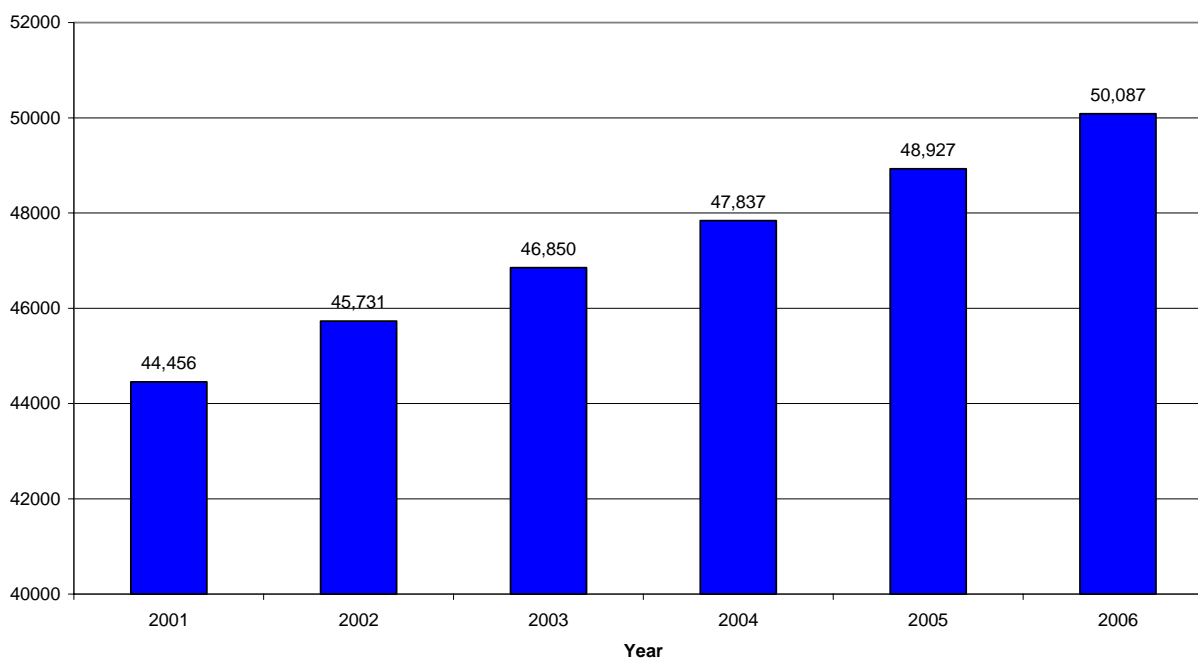
## **Overview**

The Justices of the Supreme Judicial Court established the Board of Bar Overseers, the Office of Bar Counsel, and the Clients' Security Board (CSB) by rule in 1974. The Board of Bar Overseers collects annual registration fees and uses them to fund its operations and those of the Office of Bar Counsel and the Clients' Security Board. There were 50,087 lawyers on active status at the close of fiscal 2006. In addition, 10,216 Massachusetts lawyers who asked to be placed on inactive status paid half of the annual registration fee.

Table One illustrates the continued growth in the number of attorneys admitted to the bar in Massachusetts and registered for active practice over the last six years.

**TABLE ONE**

**Active Lawyers in Massachusetts (2001 - 2006)**



The bar counsel, an independent prosecutor who serves at the pleasure of the Court, investigates grievances alleging professional misconduct against lawyers, and prosecutes formal charges against lawyers before the Board of Bar Overseers. The Board of Bar Overseers may dismiss charges, impose minor discipline, or recommend suspension or disbarment to the Court. The Board also hears petitions for reinstatement to the bar.

**Fiscal Year 2006 Contacts**

For the seventh consecutive year, the Office of Bar Counsel disposed of more files than were received. The number of complaints opened against attorneys in fiscal year 2006 totaled 1,024, an increase of 96 (or 10%) as compared to fiscal year 2005. Half of this growth is attributable to an increase in the number of files opened as a result of receipt from banks of notices of dishonored checks drawn on trust accounts.

The Attorney and Consumer Assistance Program (ACAP) continues to be successful in reducing the number of complaints opened. ACAP is the screening arm of the Office of Bar Counsel. When the Office of Bar Counsel is contacted about a grievance concerning a lawyer, a member of the ACAP staff responds promptly to that inquiry and attempts to identify the problem. ACAP resolves many such problems by providing information, calling the lawyer, or suggesting alternative ways of dealing with the dispute. A complaint form is sent immediately where serious unethical conduct might be involved. Since its inception in March 1999, ACAP has handled 45,820 matters.

During fiscal year 2006, ACAP responded to 5,470 potential complainants. Approximately 19% of these inquiries were received in written form; the remainder came from telephone calls. The ACAP staff issued forms for filing complaints in 27% of these contacts.

In many of the situations that did not require the filing of a formal complaint, ACAP assisted clients in resolving problems with attorneys by obtaining itemized bills, status reports, and the return of files and unearned retainers; discussing reasonable expectations and timetables in legal cases; and making referrals to lawyer referral services, fee dispute resolution services, and legal services organizations. The success of ACAP continues to benefit both the public and the bar and to enable bar counsel to focus attention on more serious complaints.

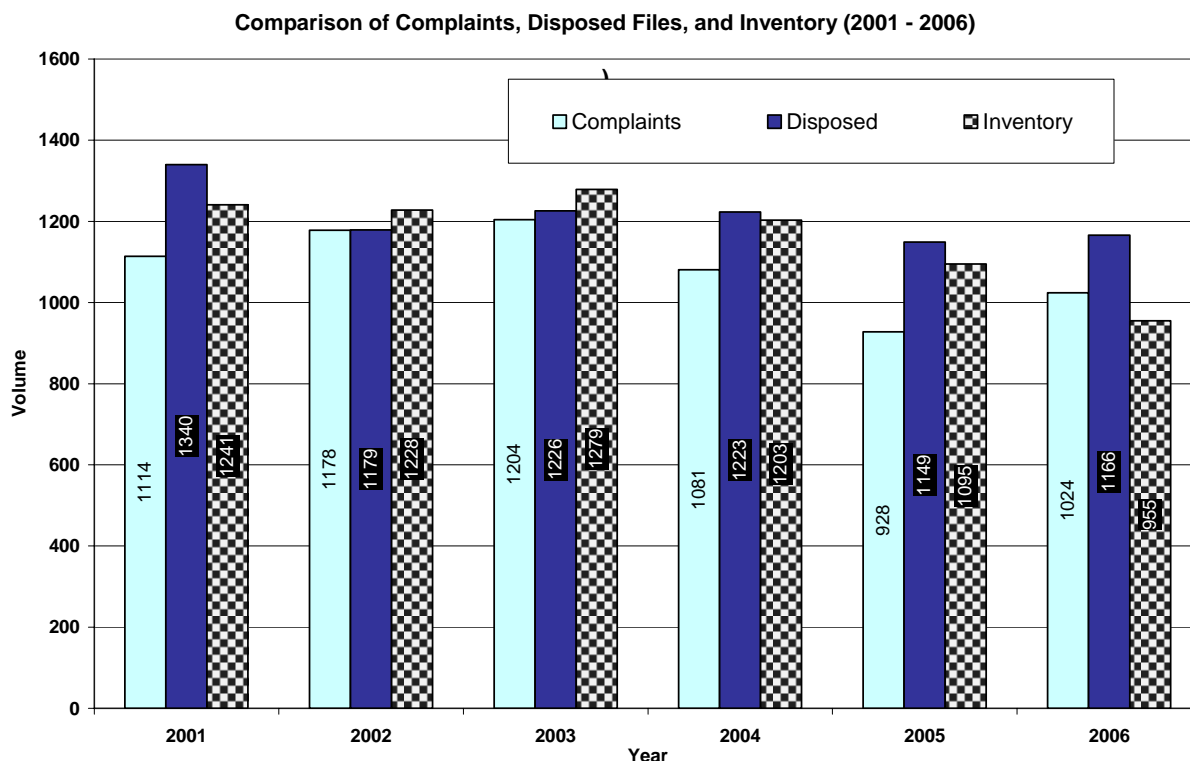
As in past years, the leading cause of inquiries to ACAP was client concerns as to neglect, lack of diligence, or a lawyer's failure to return client calls. This type of problem accounted for almost 30% of all contacts. Concerns regarding legal fees motivated another 10% of the calls to ACAP. This figure is consistent with prior years and indicates that a rule

providing for mandatory arbitration of fee disputes at the election of the client would assist many clients and lawyers by addressing these problems outside of the disciplinary system.

The area of law that generated the most inquiries to ACAP was domestic relations, followed by civil litigation, criminal defense, real estate, personal injury and trusts and estates.

## Fiscal Year 2006 Caseload

**TABLE TWO**



The 1024 files that were opened by the Office of Bar Counsel in fiscal 2006 involved 878 attorneys. Of this number, 72 files were complaints that the Office of Bar Counsel itself initiated based upon information received about possible attorney misconduct. An additional 154 files arose from bar counsel's receipt from financial institutions of notices of dishonored checks drawn on attorney trust accounts. This number is almost 50% higher than the previous year and, to the extent that most of the dishonored checks would have been

prevented by improved record-keeping, suggests that there is still more work to be done in educating the bar as to the requirements of Mass. R. Prof. C. 1.15 as amended. To this end, bar counsel in fiscal 2006 initiated a monthly free “trust account school” for lawyers, their bookkeepers and staff.

Of the complaints opened, 89% of the respondent lawyers had one complaint filed against them, 6% had two complaints, and 5% had three or more complaints filed against them. The largest numbers of complaints filed continue to allege neglect or incompetence by the attorney. The legal areas generating the most complaints include civil litigation and personal injury, real estate, criminal defense, and domestic matters.

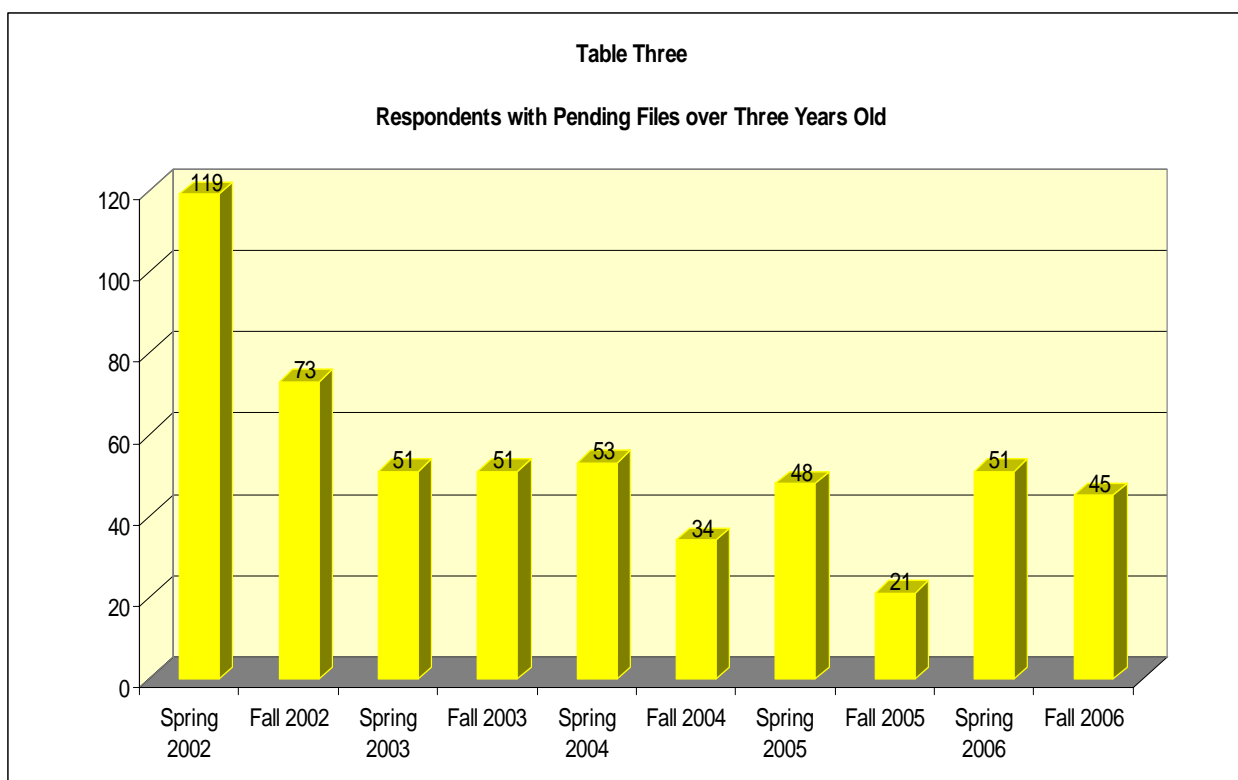
The Office of Bar Counsel continues to make it a priority to reduce the time that matters remain under investigation before a petition for discipline is filed. Following last year’s record number of petitions filed, there was a significant increase in the number of cases that went to hearing this year, as well as a concomitant increase in evidentiary hearing dates and days necessary for pre-hearing preparation, post-trial findings and appellate work.

There were fewer petitions for discipline filed in FY 2006 than in FY 2005. The number of lawyers with pending files over three years old not in petition also increased this year compared to last year. However, approximately half of the attorneys with pending files more than three years old have had a subsequent complaint filed against them that requires additional investigation before a petition can be filed. In addition, the median age of files not in petition decreased from 356 days old to 226 days old.

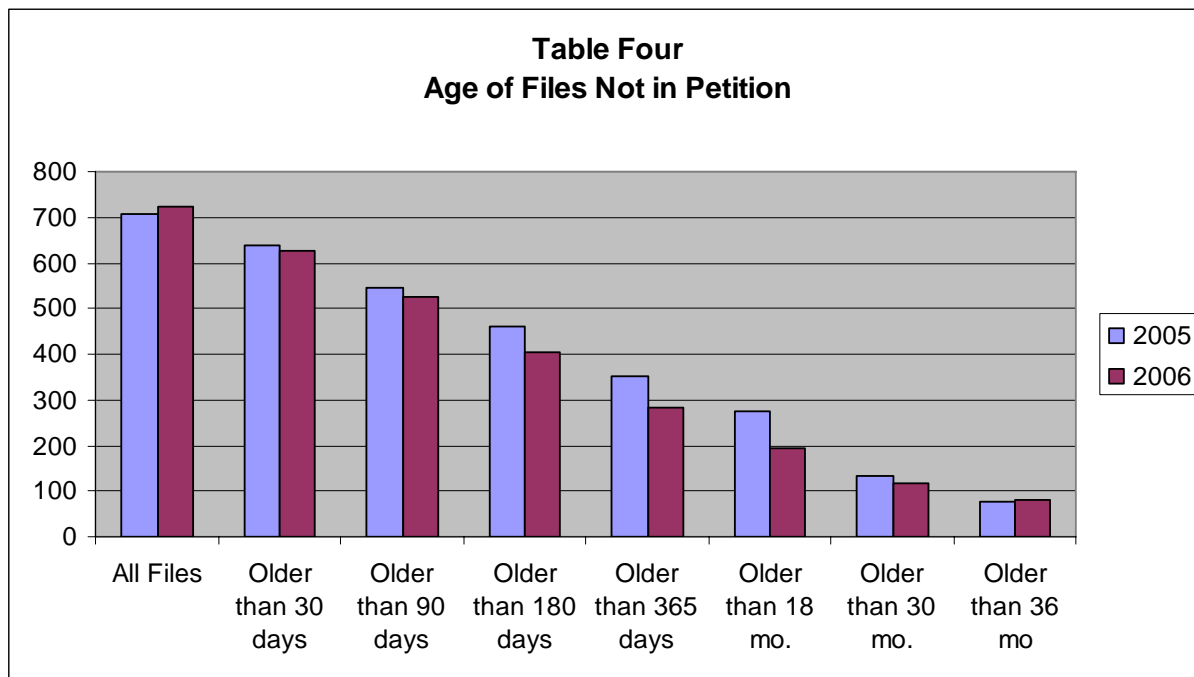
Bar counsel expects the number of petitions filed to increase, and the number of older files without petitions to decrease as matters currently in litigation wind down. The Office of Bar Counsel is also continuing to explore and implement other means to further reduce the

time between receipt of a grievance and final resolution. We expect new staff authorized by the court, including positions for a new investigator and for an attorney who will coordinate with LCL in implementing diversion to the upcoming law office management program, to assist in further reducing delay between the receipt of complaints and initiation of formal proceedings.

The table below provides a series of snapshots for each fiscal year since 2002 illustrating the number of lawyers under investigation for more than three years without a petition for discipline being filed.



Bar counsel disposed of 31% of the files opened for investigation within ninety days and 62% of the files within a year of the date of filing, both by taking disciplinary action and closing files without disciplinary action. The following table shows the numbers of pending files not in petition, by age in days, in fiscal 2006 compared to fiscal 2005.



During fiscal year 2006, the Office of Bar Counsel closed 659 files against 581 attorneys without docketing as a formal complaint. An additional 62 files against 59 lawyers resulted in a warning along with dismissal of the complaint. There were 47 attorneys who received admonitions, with 30 of those attorneys also required to attend a continuing legal education course. Another 81 lawyers received public discipline: 24 lawyers were publicly reprimanded, 22 received a term suspension, 6 were indefinitely suspended, 4 submitted a disciplinary resignation, and 25 were disbarred or resigned and were disbarred. Fifteen lawyers were temporarily suspended from the practice of law pending formal disciplinary proceedings.

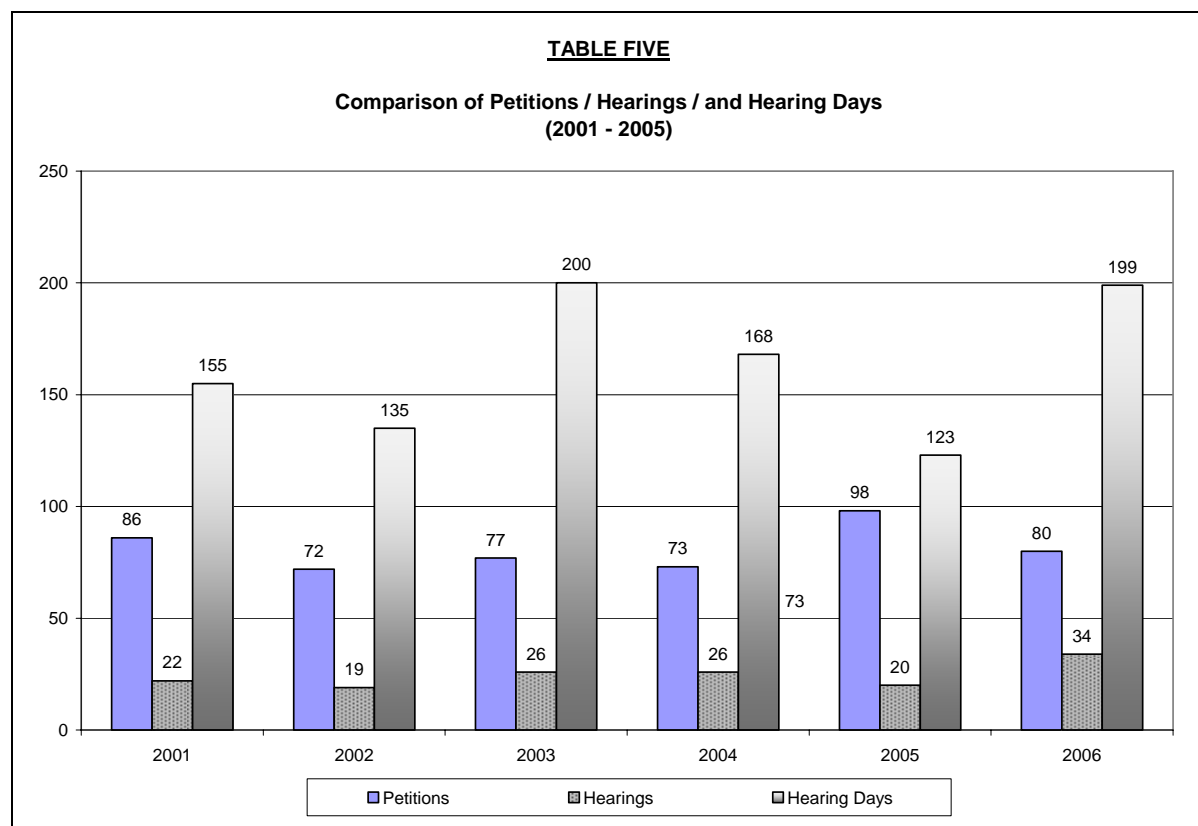
The Office of Bar Counsel filed 80 petitions for discipline (including affidavits of resignation) requesting formal hearings before the Board. There were a total of 199 hearing dates on 64 cases before hearing committees, the Board, and the Court. The total number of hearing dates represented an increase of over 60% from the previous fiscal year.



Twenty-two cases filed during the year were awaiting evidentiary hearing at the end of the fiscal year. Eleven cases with evidentiary hearings concluded were awaiting reports from hearing committees or single hearing officers at the end of the fiscal year.

Evidentiary hearings were conducted in 34 cases, representing an increase over the preceding year of almost 70% and a significantly higher number than in any of the past five years. There were 92 days of evidentiary hearings, which was two-and-a-half times as many as the year before. Each case that goes to hearing also carries with it increased numbers of dates needed for hearing preparation, as well as for post-hearing proceedings including filing requests for findings of fact and conclusions of law and appeals from findings, or opposition to appeals, to the board or the court.

The table below provides a comparison of number of petitions filed, matters heard, and hearing dates for this year and the preceding four years.



In addition, the Office of Bar Counsel filed 13 petitions for reciprocal discipline directly with the Court. There were also 13 reinstatement petitions considered during FY 2006. After hearings, 5 lawyers were reinstated to practice and one lawyer was denied reinstatement. Following short suspensions, 13 lawyers were reinstated to practice without petition or hearing.

The Justices issued six full court opinions on bar discipline matters:

*Matter of Barrett*, 447 Mass. 452 (2006)

*Matter of Cobb*, 445 Mass. 452 (2005)

*Matter of Dasent*, 446 Mass. 1010 (2006)

*Matter of Goldstone*, 445 Mass. 551 (2005)

*Matter of Lupo*, 447 Mass. 345 (2006)

*Matter of Shaughnessy*, 446 Mass. 1013 (2006)

### **Related Activities and Other News of Note**

At the invitation of the Supreme Judicial Court, a team from the Standing Committee on Lawyer Discipline of the American Bar Association conducted an evaluation of the Massachusetts system of lawyer discipline in June 2005. The Office of Bar Counsel took the lead in providing the ABA visiting team with extensive materials and coordinating its schedule of interviews with lawyers, clients, judges, board members, and members of the staff of the Board of Bar Overseers and Office of Bar Counsel.

The ABA issued its report in October 2005 and Chief Justice Marshall, in January 2006, requested comments from bar associations as to how the reports recommendations would meet the needs of the bar and the public. For a copy of the ABA report, see <http://www.mass.gov/courts/abareport06.pdf>. To assist in this process, bar counsel in May 2006 provided the court with a detailed submission highlighting those recommendations in the ABA report that bar counsel believes would improve the quality of attorney discipline and assist in reducing delay in the investigation and prosecution of complaints. For a copy of

this submission, see <http://www.mass.gov/obcbbo/proposals.htm>. The Office of Bar Counsel is prepared to work to implement such proposals from the ABA visiting team as the Court may direct.

As part of the ABA review, bar counsel took the lead in recommending that Lawyers Concerned for Lawyers start a law office management assistance program (LOMAP) and in assisting LCL in obtaining funding from the SJC for this program. Modeled on similar programs in other jurisdictions, the LOMAP program is slated to begin in 2007 and will, among other matters, provide lawyers with help with office systems and procedures. The program will be available to all Massachusetts attorneys. The Office of Bar Counsel also expects to refer lawyers needing such assistance to the program, either in lieu of or in addition to discipline.

In addition, to continue to help lawyers implement the trust account record-keeping requirements of amended Mass. R. Prof. C. 1.15, bar counsel in October 2005 initiated a free one-hour “trust account school,” held monthly at the Boston Bar Association. At least 100 attorneys, or their bookkeepers, attended the program last year. Bar counsel is also working with Massachusetts Continuing Legal Education to offer similar training programs in early 2007 to newly admitted attorneys.

Acting on a proposal from bar counsel and the Board that a rule be adopted requiring attorneys to provide additional information concerning malpractice insurance coverage, the Supreme Judicial Court in June 2006 issued an order amending S.J.C. Rule 4:02 to require that lawyers certify in their annual registration statements whether or not they are covered by professional liability insurance.

The Office of Bar Counsel continued to participate in other continuing education programs, write articles on ethical issues for publication in Lawyers Weekly, serve on bar association and court appointed committees, and respond to attorney requests for guidance on ethical issues during call-in hours three afternoons each week. The website maintained by the Office of Bar Counsel, [www.mass.gov/obcbbo](http://www.mass.gov/obcbbo), provides the bar and the public with access to all of the pertinent rules, recent decisions, and a collection of articles on ethical issues. The current status of all registered attorneys may also be accessed through a link to the website of the Board of Bar Overseers.

In June 2006, Daniel Crane resigned after seven years as chief bar counsel. As bar counsel, he guided the office through a major reorganization that led to significant reduction in delays in case processing and played a major role in important revisions to the disciplinary and procedural rules. Mr. Crane made a significant contribution to the Office of Bar Counsel and to the court, and his leadership will be missed. The Board of Bar Overseers has appointed a search committee to appoint a successor.

### **Facilitating Continuous Improvement**

The Office of Bar Counsel continues to be committed to the efficient and effective fulfillment of its mission, to strive to improve its ability to protect the public from unethical conduct by lawyers, and to preserve and enhance the integrity and high standards of the bar.

The bar and bar counsel need to work together to increase client satisfaction and decrease complaints. The high level of cooperation that ACAP receives from attorneys in resolving client concerns before complaints become necessary, as well as the bar's diligence in availing itself of bar counsel's ethics hotline, has already helped. The LOMAP program will be a further aid. The new requirement in Supreme Judicial Court Rule 4:02 that

attorneys provide professional liability insurance information on their registration forms, and that the Board make this information available to the public, will also help by making clients better informed. Bar counsel continues support for mandatory fee arbitration at the election of the client, which—combined with increased use of written fee agreements— would make a significant dent in the numbers of complaints filed.